

[COUNSEL LISTED ON SIGNATURE PAGE]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.

Plaintiff,

v.

GOOGLE INC.

Defendant.

CASE NO. CV 10-03561 WHA

**JOINT SUBMISSION IN RESPONSE
TO ORDER REGARDING RULE 706
EXPERTS**

Dept.: Courtroom 9, 19th Floor
Judge: Honorable William H. Alsup

RESPONSE

The parties have followed the Court's instructions that they try to "agree on two qualified candidates in this district and jointly call them to make sure they would be available and have no conflicts," and "recommend two qualified economists or other experts to testify under FRE 706 concerning whether or not the claims tried to the jury, if infringed, constitute the basis for demand for Android." First, both parties sifted through a large number of experts that they thought might be good candidates. Each party independently found that many experts had to be excluded for reasons of conflicts, as a result of which both parties expanded their searches outside the Northern District of California. Second, the parties exchanged names of several experts who survived this process, after which they jointly reached out to those experts to assess availability and conflicts.

Having now concluded the vetting process, the parties regret to inform the Court that they do not yet have agreed experts who fulfill the Court's criteria. All experts vetted by the parties are either (1) unavailable (e.g., Candidate A), (2) not located in the District (e.g., Candidate A, Candidate B, Candidate C, Candidate D, and Candidate E), or (3) have actual or apparent conflicts that one party or the other believes would prevent them from being an appropriate court-appointed expert (e.g., Candidate C (previously approached Oracle in connection with this litigation), Candidate B (recently adverse to Oracle, and employment issue with consulting firm retained by Oracle in this case), Candidate D (investor in Google, has written on Android, and has stated positions on software patents generally), Candidate E (contacts with Google and past payment by Google), Candidate F (contacts with Sun Microsystems), and Candidate G (represented Google in two previous cases)). Google objects to one additional potential expert proposed by Oracle, Candidate H, on the ground that he is a technical (computer science) rather than a marketing expert. The parties will separately submit the names of the candidates to avoid putting them and the parties' comments about them in the public spotlight.

The parties are willing to continue working together in an effort to satisfy the Court's request for recommendations, but would need more time to do so. In light of the results to date and the Court's July 22, 2011 Order on the *Daubert* motion, however, the parties would

1
2 appreciate further direction from the Court as to whether it wishes the parties to attempt further
3 efforts to agree on candidates who meet the Court's criteria.

4 With respect to the Court's statement that the parties may submit declarations showing
5 cause why such appointments would (or would not) be advisable, and describing the assignments
6 counsel would prefer be given to the experts, Google is submitting a declaration herewith. Oracle
7 is not submitting a declaration, but notes that it disagrees with Google's position as to the
8 advisability of a marketing expert as compared to a technical expert on the issue of whether the
9 claims to be tried to the jury constitute the basis for demand for Android.

Dated: July 26, 2011

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By: /s/ Steven Holtzman
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ATTESTATION

I, Robert A. Van Nest, am the ECF User whose ID and password are being used to file this JOINT SUBMISSION IN RESPONSE TO ORDER REGARDING RULE 706 EXPERTS. In compliance with General Order 45, X.B., I hereby attest that Steven C. Holtzman has concurred in this filing.

Date: July 26, 2011

/s/ Robert Van Nest

Robert A. Van Nest